

## Opinion of the court.

In this case the conveyances which are impeached are attended with a trust of this nature, and cannot be sustained against the creditors of Aird. It is in proof that Aird retained the possession of the premises, which he sold and conveyed, from the 23d day of November, 1853, the date of the deed, until the spring of 1856, in pursuance of a parol agreement, incompatible with the conditions of the deed. By this agreement he reserved the right of possession for one year free of rent, and this reservation constituted a part of the consideration paid by Spring for the property, and, being contrary to the provisions of the deed, was the creation of a secret trust, for the benefit of Aird, to the extent of the interest reserved, and therefore rendered the conveyance fraudulent as to creditors, and void. If Spring could, in this way, pay part of the consideration, why not extend the term of the reservation, and pay the whole of it? It makes no difference in the legal aspect of this case, that the interest reserved was not of great value. It is enough that it was a substantial interest, for the benefit of the grantor, reserved in a manner which was inconsistent with the provisions of the deed.

DECREE REVERSED, and the court below ordered to enter a decree setting aside the conveyance as fraudulent.

## WOOD v. STEELE.

The alteration of the date in any commercial paper,—though the alteration *delay* the time of payment,—is a material alteration, and if made without the consent of the party sought to be charged, extinguishes his liability. The fact that it was made by one of the parties signing the paper before it had passed from his hands, does not alter the case as respects another party (a surety), who had signed previously.

ERROR to the Circuit Court for the District of Minnesota.

Mr. Justice SWAYNE delivered the opinion of the court.

The action was brought by the plaintiff in error upon a promissory note, made by Steele and Newson, bearing date October 11th, 1858, for \$3720, payable to their own order

## Opinion of the court.

one year from date, with interest at the rate of two per cent. per month, and indorsed by them to Wood, the plaintiff.

Upon the trial it appeared that Newson applied to Allis, the agent of Wood, for a loan of money upon the note of himself and Steele. Wood assented, and Newson was to procure the note. Wood left the money with Allis to be paid over when the note was produced. The note was afterwards delivered by Newson, and the money paid to him. Steele received no part of it. At that time, it appeared on the face of the note, that "September" had been stricken out and "October 11th" substituted as the date. This was done after Steele had signed the note, and without his knowledge or consent. These circumstances were unknown to Wood and to Allis. Steele was the surety of Newson. It does not appear that there was any controversy about the facts. The argument being closed, the court instructed the jury, "that if the said alteration was made after the note was signed by the defendant, Steele, and by him delivered to the other maker, Newson, Steele was discharged from all liability on said note." The plaintiff excepted. The jury found for the defendant, and the plaintiff prosecuted this writ of error to reverse the judgment. Instructions were asked by the plaintiff's counsel, which were refused by the court. One was given with a modification. Exceptions were duly taken, but it is deemed unnecessary particularly to advert to them. The views of the court as expressed to the jury, covered the entire ground of the controversy between the parties.

The state of the case, as presented, relieves us from the necessity of considering the questions,—upon whom rested the burden of proof, the nature of the presumption arising from the alteration apparent on the face of the paper, and whether the insertion of a day in a blank left after the month, exonerates the maker who has not assented to it.

Was the instruction given correct?

It was a rule of the common law as far back as the reign of Edward III, that a rasure in a deed avoids it.\* The effect of alterations in deeds was considered in *Pigot's case*,† and

\* Brooke's Abridgment, Faits, pl. 11.

† 11 Coke, 27.

## Opinion of the court.

most of the authorities upon the subject down to that time were referred to. In *Master v. Miller*,\* the subject was elaborately examined with reference to commercial paper. It was held that the established rules apply to that class of securities as well as to deeds. It is now settled, in both English and American jurisprudence, that a material alteration in any commercial paper, without the consent of the party sought to be charged, extinguishes his liability. The materiality of the alteration is to be decided by the court. The question of fact is for the jury. The alteration of the date, whether it hasten or delay the time of payment, has been uniformly held to be material. The fact in this case that the alteration was made before the note passed from the hands of Newson, cannot affect the result. He had no authority to change the date.

The grounds of the discharge in such cases are obvious. The agreement is no longer the one into which the defendant entered. Its identity is changed: another is substituted without his consent; and by a party who had no authority to consent for him. There is no longer the necessary concurrence of minds. If the instrument be under seal, he may well plead that *it is not his deed*; and if it be not under seal, that he did not so promise. In either case, the issue must necessarily be found for him. To prevent and punish such tampering, the law does not permit the plaintiff to fall back upon the contract as it was originally. In pursuance of a stern but wise policy, it annuls the instrument, as to the party sought to be wronged.

The rules, that where one of two innocent persons must suffer, he who has put it in the power of another to do the wrong, must bear the loss, and that the holder of commercial paper taken in good faith and in the ordinary course of business, is unaffected by any latent infirmities of the security, have no application in this class of cases. The defendant could no more have prevented the alteration than he could have prevented a complete fabrication; and he had as

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\* 4 Term, 320, 1 Smith's Leading Cases, 1141.



## Statement of the case.

little reason to anticipate one as the other. The law regards the security, after it is altered, as an entire forgery with respect to the parties who have not consented, and so far as they are concerned, deals with it accordingly.\*

The instruction was correct and the

JUDGMENT IS AFFIRMED.

## WILSON v. WALL.

1. *Semble*, that under the treaty of the United States with the Choctaws, in 1830, by which the United States agreed that each Choctaw head of a family desirous to remain and become a citizen, &c., should be entitled to one section of land; "and in like manner shall be entitled to one-half that quantity for each unmarried child which is living with him over ten years of age, and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent;" no trust was meant to be created in favor of the children. They were named only as measuring the quantity of land that should be assigned to the head of the family.
2. However this may be, if under the assumption that no trust was meant to be created, the United States have issued under the treaty a patent to a Choctaw head of a family, individually and in fee simple for all the sections, a purchaser from him *bona fide* and for value will not be affected with the trust, even though he knew that his vendor was a Choctaw head of a family, and in a general way that he had the land in virtue of the treaty.
3. Where it is sought to affect a *bona fide* purchaser for value with constructive notice, the question is not whether he had the means of obtaining, and might by prudent caution have obtained the knowledge in question, but whether his not obtaining it was an act of gross or culpable negligence.

## ERROR to the Supreme Court of Alabama.

By the fourteenth article of a treaty made in 1830, between the Choctaw Indians and the United States, by which the

\* Goodman v. Eastman, 4 New Hampshire, 456; Waterman v. Vose, 43 Maine, 504; Outhwaite v. Luntley, 4 Campbell, 180; Bank of the United States v. Boone, 3 Yates, 391; Mitchell v. Ringgold, 3 Harris & Johnson, 159; Stephens v. Graham, 7 Sergeant & Rawle, 509; Miller v. Gilleland, 19 Pennsylvania State, 119; Heffner v. Wenrich, 32 Id. 423; Stout v. Cloud, 5 Little, 207; Lisle v. Rogers, 18 B. Monroe, 529.